

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**CRI-2023-090-3914  
[2024] NZHC 3499**

**THE KING**

v

**JAYKOB TUTAI**

Hearing: 21 November 2024

Appearances: C Paterson and L Dittrich for Crown  
C A Robertson and S Norrie for Defendant

Sentence: 21 November 2024

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**SENTENCING REMARKS OF LANG J**

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Solicitors/counsel:  
Meredith Connell, Office of the Crown Solicitor, Auckland  
C Paterson, Auckland

[1] Mr Tutai, you appear for sentence having pleaded guilty to the murder of Ms Nazia Hai, your former partner and the mother of your six-year-old son. Ms Hai was 27 years of age at the time she died, whilst you were 29 years of age at that time.

[2] There is no dispute that the sentence I must impose is one of life imprisonment. The issue I need to decide today is the length of time you should be required to serve before being eligible to apply for parole.

### **Factual background**

[3] You have pleaded guilty on the basis of an agreed summary of facts. This records that you and Ms Hai had been in a relationship since 2012. Your son was born in 2017.

[4] Your son and his family celebrated his sixth birthday on 10 September 2023. By this stage you and Ms Hai had been separated, and you and she were staying in separate bedrooms at her mother's address. You were not present at the celebration of your son's birthday but returned to the address later in the evening. The summary records that there was a degree of conflict between you and Ms Hai at that time, motivated it seems by your mistrust of her.

[5] You and Ms Hai slept in separate bedrooms that night as you had been doing since you separated. Your 11-year-old niece and your son were also staying at the address that night.

[6] At approximately 6.45 am on 11 September 2023, Ms Hai came into your bedroom and asked where your son's Nintendo console was. She also asked you whether you had sold it.

[7] This led to a short verbal argument that quickly escalated into a physical assault in which you stabbed Ms Hai numerous times. These included deep wounds to her chest cavity, upper torso and neck area. You used a knife taken from a knife block in the kitchen to inflict these wounds, although it is not known when you armed yourself with this.

[8] Ms Hai's mother ran to her daughter's assistance when she heard her screaming. As she entered the room, she observed you removing the knife from Ms Hai's body. Ms Hai's mother then tried to drag her daughter away from you. At this point you telephoned the police. You told them you had stabbed your former partner and that she was dying. When the police arrived at the address a short time later, they found you inside the house still holding the knife in your hand. When challenged, you refused to drop the knife. The police were required to use force to remove it and arrest you.

[9] Attempts by first responders to save Ms Hai's life were unsuccessful. She died on the way to hospital from the injuries you had inflicted on her. The post-mortem examination revealed seven deep stab wounds to Ms Hai's neck, chest, upper arm and upper back. These varied between 7.5 and 11 centimetres in depth. Four other less significant wounds were found in the right neck, right upper arm, left shoulder and left forearm.

[10] You declined to make a formal statement to the police but told them you knew what you did was wrong.

[11] You told the writer of the pre-sentence report that you had returned to the address on the evening of 10 September 2023 after spending two days drinking alcohol and consuming drugs with associates. The latter included methamphetamine and cocaine. You said you had had little sleep over that period and returned home in a confused and paranoid state. You said you had been hearing "guys' voices" from another room, and believed these people would come and get you in the morning. You said you armed yourself with knives to "take them out".

[12] Not surprisingly, I have been provided with several victim impact statements from members of Ms Hai's family and her close friends. These make it clear that your offending has had a devastating effect for all concerned. Your son has lost a mother at a young age, Ms Hai's family have lost a cherished daughter and sister and her friends have lost a much-loved companion with whom they spent many happy times. You alone, Mr Tutai, must bear sole responsibility for the grief your offending has caused to all these people.

## **Section 104 of the Sentencing Act 2002**

[13] The Crown contends that you committed the offence of murder with a level of brutality and callousness that engages s 104(1)(e) of the Sentencing Act 2002. This requires the Court to impose a minimum term of 17 years imprisonment in cases where the crime of murder is committed with a high level of callousness and brutality. Your counsel does not accept that s 104(1)(e) applies. She submits that a minimum term of no more than 12 years imprisonment would be appropriate after taking into account all relevant factors.

[14] The Crown relies on several factors in support of its submission that s 104(1)(e) is engaged. First, the sheer number of significant stab wounds and their location in vulnerable parts of Ms Hai's body. Secondly, the fact that this occurred within a domestic environment and in circumstances where other relatives, including your 11-year-old niece and six-year-old son, were present at the address. It says the fact that you used a lethal weapon to inflict the wounds is also relevant.

[15] As the Crown acknowledges, the level of brutality and cruelty used to commit a murder must be at a high level before s 104(1)(e) will be engaged. This is because most, if not all, murders involve a degree of callousness and brutality. Sadly, many of the cases in this area involve murders committed in a domestic environment, and knives have often been used to stab the victim on multiple occasions. This no doubt reflects the fact that knives are readily available in most home environments.

[16] The cases cited to me by both counsel demonstrate that in some cases involving these factors the courts have found that s 104(1)(e) is engaged but in others they have not. It comes down to a matter of judicial assessment having regard to the circumstances in which the crime was committed.

[17] There were undoubtedly aspects of callousness and brutality about your offending. The number and location of the stab wounds and the fact that the offending occurred within a home environment where Ms Hai should have been able to feel safe reflect this. Had you stabbed her in the presence of your son or other members of your family, I would have found sufficient callousness in the offending for s 104(1)(e) to apply. Thankfully, however, the summary of facts records that nobody else entered

the room until Ms Hai's mother came in at the very end of the episode. Although your offending is undoubtedly bad, I am not satisfied it reaches the required threshold of being sufficiently brutal and callous to engage s 104(1)(e).

[18] This means it is necessary to consider what the minimum term of imprisonment should be independently of s 104. A useful way of undertaking this exercise is to have regard to comparable cases to obtain guidance as to what the minimum term of imprisonment should be.

### **Comparison with other cases**

[19] Both counsel have referred me to numerous sentencing authorities that they say support their respective arguments. Of these, I consider two cases cited to me by the Crown to have some factual similarities. In *R v P*, the offender and the deceased had been living together in a long-term relationship that produced several children.<sup>1</sup> The relationship was volatile and involved physical and emotional violence. On the day of the offending, the offender had assaulted his partner, breaking her nose and causing bruising to her face. The offender's eldest son called his grandmother for help. When she arrived, the offender's mother arranged for his father to pick up the two older children and attempted to distract her son whilst his partner went to a bedroom to hide. His partner used this opportunity to call emergency services for help.

[20] The offender became aware of the attempt to distract him and charged into his partner's room, grabbing her phone from her. He then went to the kitchen, picked up a boning knife and returned to the bedroom, where his partner was lying on the bed. Their four-month-old baby was asleep between his mother's legs and their four-year-old child was also in the room. The offender leapt on top of his partner and engaged in what the Court described as a "frenzied attack". He stabbed her upper body a total of 17 times. These included four stab wounds to the neck, nine to the chest and abdomen and four to other parts of the body, including the shoulder, hand and arms. When his mother tried to intervene, she received a cut to her hand. The offender then left the address. The sentencing Judge accepted that s 104(1)(e) was

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<sup>1</sup> *R v P* [2022] NZHC 2197.

engaged.<sup>2</sup> He considered the offending would have attracted a minimum term of imprisonment of 17 years six months in any event.<sup>3</sup>

[21] The case of *R v Peeni* also has some similarities.<sup>4</sup> As in the present case, the offending in that case occurred in a domestic context. However, in that case there had been a history of violence in the relationship. On the day of the offending, the children heard their father say he was going to kill their mother. The police were then alerted. In response, the offender punched his partner to the head at least five times and then struck her in the head with a heavy paving brick on at least 13 occasions. The offending was witnessed by three of the children and the other children heard what was going on. In that case, I held that s 104(1)(e) is engaged and said that a starting point of 17 years was required as a minimum term of imprisonment.

[22] As in *R v P*, your offending involved the infliction of several stab wounds to vulnerable parts of the victim's body. It also occurred in a domestic context and in circumstances where other family members, including your six-year-old son, were present at the address although not in the room. It obviously had profound consequences for Ms Hai's family and friends. However, I consider your offending was less serious than that in *R v P* because you inflicted fewer stab wounds than did the offender in that case. In addition, your offending did not occur in front of your family or her family and did not involve the infliction of violence earlier on the day of the murder as occurred in *R v P*. Further, the summary of facts in your case does not state that your offending occurred against a background of earlier violence in the relationship.

[23] Your offending is also less serious than that in *R v Peeni* because that case also involved a background of earlier violence in the relationship whereas your offending does not. The offending in that case also involved the infliction of violence in two different forms and on a more sustained basis.

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<sup>2</sup> At [57]–[58].

<sup>3</sup> At [36].

<sup>4</sup> *R v Peeni* [2020] NZHC 1352.

[24] I draw greater assistance from *R v Momoisea*, a case cited to me by your counsel.<sup>5</sup> In that case, the defendant had taken a large knife to an address where her former partner was living with his new wife. She hid in the address and when her former partner entered with his wife, she stabbed him seven times to the chest, back and upper arms. The fatal wound penetrated his heart and liver. She also stabbed her former partner's new wife twice, but she survived due to emergency heart surgery. In that case, the sentencing Judge did not find that the offending had satisfied the necessary threshold under s 104(1)(e). However, he considered it required a minimum term of 15 years imprisonment. The Judge then increased that by two years because the offender had also attempted to kill her former partner's new wife. Your counsel has cited several other cases in which the offending was broadly similar to yours, although each has several distinguishing characteristics. The offending in *Momoisea* is also more serious than your offending because it involved significant premeditation.

[25] Having regard to the aggravating factors I have identified in your case, I consider a minimum term of 14 years six months imprisonment is appropriate. It is now necessary to adjust this to take into account aggravating and mitigating factors personal to you.

### **Aggravating factors**

[26] You have several previous convictions, although the only one of potential relevance for present purposes, because it involves threats of violence, is a conviction of aggravated robbery in 2013. You received a sentence of two years eight months imprisonment on this charge on 11 September 2014. However, that involved offending of a different nature to that reflected in the present charge and the Crown does not suggest I should increase the minimum term of imprisonment to reflect it. I agree.

### **Mitigating factors**

[27] I propose to give you credit for the entry of your guilty plea. Although you did not enter your plea until 11 months after the offending, it nevertheless saved your

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<sup>5</sup> *R v Momoisea* [2018] NZHC 1577.

victim's family the trauma of re-living the circumstances of your partner's death. I consider recognition must be given to that fact.

[28] The sentencing principles that usually apply to the level of discount given for a guilty plea do not apply when setting the minimum term of imprisonment an offender is required to serve for the crime of murder.<sup>6</sup> In the present context a discount of one to two years will usually be appropriate to reflect a guilty plea.<sup>7</sup> In your case I consider the discount of one year suggested by your counsel to be appropriate to recognise your guilty plea.

[29] Your counsel submits that I should also apply a further discount of approximately one year to reflect your personal circumstances, including remorse. She relies in this context on information contained in the pre-sentence report, a report prepared by a forensic psychiatrist and a drug and alcohol assessment report.

[30] The reports reveal that you have a lengthy history of substance abuse involving a range of illicit substances. At times this has caused you to experience substance-induced psychotic symptoms, although you have never been diagnosed with an enduring serious mental illness. Additionally, you have presented with symptoms of anxiety for much of your life and have been prescribed anti-depressant medication for this in recent years.

[31] The reports state that you went to live with your maternal grandmother as a child and were then raised by her. This was in part to protect you from your mother's unstable relationship with your father due to his alcohol consumption. Your mother described you as having an introverted personality and says that you presented with paroxysms of rage from a very early age. You told the psychiatrist that this reflected your long-standing resentment towards your parents for the fact that they sent you to live with your grandmother. You acknowledged that, with limited parental supervision, you became involved in conduct-disordered behaviour during childhood. This included shoplifting, inflicting cruelty on animals and lighting fires.

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<sup>6</sup> *Malik v R* [2015] NZCA 597 at [35]–[37].

<sup>7</sup> *Frost v R* [2023] NZCA 294.



[32] The reports note that you began using drugs whilst at intermediate school and continued smoking cannabis until 2022, when you stopped because you were experiencing psychotic symptoms involving auditory and visual hallucinations. You also used solvents and other hallucinogenic drugs throughout adolescence and adulthood. You also began to consume alcohol heavily between the ages of 17 and 19 and acknowledged that this caused problems with your mental health and relationships. You began consuming methamphetamine at the age of 16 and you were consuming that drug heavily before and after you first went to prison in 2014. You continued using methamphetamine whilst you were in your twenties and during this period, you also began using cocaine and other forms of stimulant medication.

[33] On your release from prison in 2015, you resumed your relationship with Ms Hai. You describe your relationship as becoming toxic this time, marred by infidelity on both sides and significant substance use. You told the psychiatrist that the birth of your son in 2017 led to significant pressure on your relationship with Ms Hai. This resulted in you working out of Auckland intermittently to avoid the pressure produced by the relationship.

[34] Between 2017 and 2020, you were a member of a gang but you say you found this to be a negative experience because it increased your anxiety levels, even though association with the gang provided you with a sense of belonging.

[35] You present, as I have said, with a lengthy history of anxiety issues and have been prescribed medication for this over the last four years. Recently you have relied on medication to counter anger issues you encountered in prison. You told the psychiatrist that you need medication to keep these in check. The psychiatrist notes that you meet the criteria for anti-social personality disorder as well as substance abuse disorder.

[36] The psychiatrist also notes that you did not display or speak of psychotic symptoms to those present at the address prior to the offending, or to police officers in the immediate aftermath. Although Ms Hai's mother noticed unusual behaviour on your part during the previous evening, you presented as being calm to the numerous

police officers who attended the scene on the morning of the offence. Further, you did not appear to be acting unusually during the 24-hour period following your arrest.

[37] The psychiatrist notes that the perceptual disturbances that you have experienced were exacerbated by your ongoing use of a range of substances over many years and, in particular, methamphetamine. He says that visual hallucinations are more commonly associated with a substance-induced psychosis. Your psychotic symptoms ceased once you were remanded in custody, where access to intoxicants would have been significantly limited.

[38] In addition, the psychiatrist notes that you have no family history of any psychotic illness. You have never been hospitalised or assessed by specialist mental health services for psychotic symptoms. You did not display those symptoms at your interviews with the psychiatrist and the symptoms you reported from your past were vague. The psychiatrist therefore concludes that your prior psychotic symptoms represent recurrent substance-induced psychotic episodes that are currently in remission.

[39] For completeness, I note that the drug and alcohol assessment report states that you are now at the “Contemplation” stage of the recovery process. This is an early stage of the recovery process in which a person is not yet ready to make a change but is open to accepting that their behaviour is problematic and may need to change. The report says that such persons may be open to learning about different strategies for controlling or ending their addictive behaviours without necessarily committing to a particular approach or to permanent change. You obviously have a very long way to go in confronting your addiction issues.

[40] I turn finally to the issue of remorse. The fact that you were the person who called the emergency services to the scene does not constitute remorse, particularly when you refused to put down the knife when they arrived. Your observation that you had done something “really bad” is effectively a statement of the obvious, as is your observation that what you did has changed everyone’s lives. The letter you have tendered today could easily be regarded as being too little and too late. I am only prepared to give limited weight to such expressions of remorse as you have made.

[41] Even taking into account the material contained in the reports, I find it difficult to identify a clear nexus between the present offending and the personal issues you have encountered since your childhood. However, I accept that the authorities have now established that it is not necessary for a direct nexus to be established.<sup>8</sup> I also, however, need to bear in mind the fact that any drug-induced psychotic effects that may have contributed to your offending cannot be regarded as a mitigating factor.<sup>9</sup> I accept that the factors that initially caused you to turn to drugs and alcohol as a form of comfort may have stemmed in part from the personal issues you faced in your childhood as identified in the reports. I therefore propose to reduce the minimum term of imprisonment by six months to reflect this possibility, as well as to recognise that you have some remorse for your actions.

### **Sentence**

[42] Mr Tutai, on the charge of murder, you are sentenced to life imprisonment. You are ordered to serve a minimum term of 13 years before being eligible to apply for parole.

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Lang J

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<sup>8</sup> *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [109]-[110].

<sup>9</sup> Sentencing Act 2002, s 9(3).